

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GRACE L. SANDOVAL,

vs.

LEONARD FINK.

Plaintiff,

Defendant.

CASE NO. 08cv1869-L(NLS)

**ORDER (1) GRANTING
MOTION TO PROCEED *IN*
FORMA PAUPERIS; (2)
DENYING REQUEST FOR
APPOINTMENT OF COUNSEL;
AND (3) DISMISSING
COMPLAINT**

Plaintiff Grace L. Sandoval, proceeding *pro se*, has submitted a complaint pursuant to 18 U.S.C. § 1962. With the complaint Plaintiff filed a Motion to Proceed *in Forma Pauperis* and a Request for Appointment of Counsel.

All parties instituting any civil action, suit or proceeding in a United States District Court must pay a filing fee. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff's declaration shows she has insufficient income and assets to pay the filing fee. Accordingly, Plaintiff's motion to proceed *in forma pauperis* is granted.

The court is obligated to review a complaint filed *in forma pauperis* and must dismiss it if it determines that the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune

1 from such relief. 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845 (9th
 2 Cir. 2001). “[W]hen determining whether a complaint states a claim, a court must accept
 3 as true all allegations of material fact and must construe those facts in the light most
 4 favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

5 A complaint will be considered frivolous, and therefore subject to dismissal under
 6 § 1915(e)(2)(B), “where it lacks an arguable basis either in law or in fact.” *Nietzke v.*
 7 *Williams*, 490 U.S. 319, 325 (1989); *see also Denton v. Hernandez*, 504 U.S. 25, 32-33
 8 (1992). A federal court cannot properly *sua sponte* dismiss an action commenced *in forma*
 9 *pauperis* applicant if the facts alleged in the complaint are merely “unlikely.” *Denton*, 504
 10 U.S. at 33. However, a complaint may be properly dismissed *sua sponte* if the allegations
 11 are found to be “fanciful,” “fantastic,” or “delusional,” or if they rise to the level of the
 12 irrational or the wholly incredible.” *Id.* In addition, cases which “merely repeat[] pending
 13 or previously alleged claims” may be dismissed as frivolous. *Caro v. United States*, 70
 14 F.3d 1103, 1105 n.2 (9th Cir. 1995). If a case is classified as frivolous, “there is, by
 15 definition, no merit to the underlying action and so no reason to grant leave to amend.”
 16 *Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (*en banc*).

17 Plaintiff claims her action arises under the Racketeer Influenced and Corrupt
 18 Organizations Act (“RICO”), 18 U.S.C. § 1962(a), (b), (c) and/or (d). (*See* docket no. 1,
 19 Civil Cover Sheet.) Pursuant to 18 U.S.C. § 1964(c), “[a]ny person injured in his business
 20 or property by reason of a violation of section 1962 of this chapter may sue therefor in any
 21 appropriate United States district court . . .”

22 Neither the complaint nor the accompanying RICO Case Statement is sufficient to
 23 state a claim. In a 33-page complaint, devoid of any headings or even paragraphs, Plaintiff
 24 offers a stream-of -consciousness account of alleged criminal activity.

25 The allegations are essentially the same as those Plaintiff made in *Sandoval v. Pina*,
 26 case no. 08cv1297-L(LSP). The complaint is therefore dismissed as frivolous. *See Caro*,
 27 70 F.3d at 1105 n.2.

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1 In the alternative, as with Plaintiff's prior allegations, her current allegations of
 2 assault, personal injuries, rape, kidnaping, and burglary, allegedly perpetrated by Defendant
 3 and other persons whose connection to Defendant is unclear, are insufficient to state a
 4 RICO claim. "A civil RICO claim requires allegations of the conduct of an enterprise
 5 through a pattern of racketeering activity that proximately caused injury to the plaintiff."
 6 *Swartz v. KPMG LLP*, 476 F.3d 756, 760-61 (9th Cir. 2007). Specifically, the "elements of
 7 a civil RICO claim are as follows: (1) conduct (2) of an enterprise (3) through a pattern (4)
 8 of racketeering activity (known as predicate acts) (5) causing injury to plaintiff's business
 9 or property." *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361
 10 (9th Cir. 2005). To establish liability, "one must allege and prove the existence of two
 11 distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person'
 12 referred to by a different name." *Id.* The allegations in the complaint do not provide a
 13 basis for an inference that the alleged criminal activity was a part of an enterprise or that
 14 Defendant was engaged in such an enterprise. Accordingly, the complaint is dismissed
 15 because it fails to state a claim for a civil RICO violation.

16 Finally, Plaintiff's allegations are fanciful and fantastic rather than merely unlikely.
 17 An example of Plaintiff's "wholly incredible" allegations is that

18 Leonard Fink is joined with the orphans that have multiple diseases in taking
 19 large amounts of human blood from Americans in San Diego County,
 20 California and many other counties in California where he, Leon Fink travels
 21 in his blue Toyota truck. Leonard Fink is operating dialysis machines
 22 illegally in private homes by forcing into private homes to take human blood
 23 illegally. . . . Leonard Fink is joined with registered nurses from the country
 of Phillippines that are employed at the U.C.S.D. Medical Center, W. Arbor,
 San Diego, California in operating dialysis machines illegally in private
 homes. The registered nurses employed at U.C.S.D. Medical Center, W.
 Arbor, San Diego, California have false degrees.

24 Another example is that

25 Leonard Fink forces into private homes to steal money, food, etc. for his
 26 heroin addiction, etc. Leonard Fink relative . . . Virginia Cuthriel was
 27 employed for the Welfare Department, La Mesa, California. [She] informed
 Leonard Fink of all my information when I . . . was a student at San Diego
 State University, San Diego, California where I . . . was invaded by many
 28 illegals, orphans, criminals, drug addicts, etc. involved with the German
 families in San Diego County, California including Robert Goodman Sr. that
 claims to be a United States veteran. . . . [He] invaded my relative, the star


1 Elvis Presley in La Miranda, California with many drug addicts including the
2 orphan, O.J. Simpson and his gay love, Patrick J. Clark. Robert Goodman Sr.
3 planned to invade all Hollywood stars . . . with illegal drug and harmful
substances from Mexico. Robert Goodman Sr. invaded Elvis Presley with an
4 Indian from Rincon Indian Reservation, San Diego, California, Priscilla
Spencer.

5 Although in some cases it may be difficult to judge whether a plaintiff's factual allegations
6 are truly "fanciful," "fantastic," or "delusional" as opposed to merely "unlikely," this is not
7 such a case. *See Denton*, 504 U.S. at 33. These allegations "rise[] to the level of irrational
8 or the wholly incredible." *Id.* Accordingly, the complaint is dismissed as frivolous. *See*
9 *Lopez*, 203 F.3d at 1127 n.8.

10 Based on the foregoing, Plaintiff's request to proceed *in forma pauperis* is
11 **GRANTED**. Further, the complaint is **DISMISSED WITHOUT LEAVE TO AMEND**.
12 Plaintiff's motion for appointment of counsel is **DENIED** as moot..

13 **IT IS SO ORDERED.**

14
15 DATED: October 24, 2008

16 
17 M. James Lorenz
United States District Court Judge

18 COPY TO:

19 HON. NITA L. STORMES
UNITED STATES MAGISTRATE JUDGE

20 ALL PARTIES/COUNSEL
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